

Calendar No. 395

104TH CONGRESS
2D SESSION**S. 1425****[Report No. 104-261]**

To recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 27, 1995

Mr. MURKOWSKI (for himself, Mr. HATCH, Mr. STEVENS, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MAY 9, 1996

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Revised Statutes 2477
5 Rights-of-Way Settlement Act”.

1 **SEC. 2. NOTICE OF RIGHTS-OF-WAY ACROSS PUBLIC LANDS**
 2 **GRANTED UNDER REVISED STATUTES SEC-**
 3 **TION 2477.**

4 ~~(a) NOTICE OF R.S. 2477 RIGHT-OF-WAY.—~~

5 ~~(1) IN GENERAL.—Any State, political subdivi-~~
 6 ~~sion of a State, or other holder of a right-of-way~~
 7 ~~across public lands that was granted under section~~
 8 ~~2477 of the Revised Statutes before October 21,~~
 9 ~~1976, or any person who uses or could use such a~~
 10 ~~right-of-way for passage across public lands, shall~~
 11 ~~file with the head of the agency or department man-~~
 12 ~~aging such public lands (referred to in this Act as~~
 13 ~~the “Secretary”) a notice of the right-of-way.~~

14 ~~(2) FILING OF NOTICE.—The notice shall—~~

15 ~~(A) be filed not later than 5 years after~~
 16 ~~the date of enactment of this Act;~~

17 ~~(B) identify the State and political subdivi-~~
 18 ~~sion of a State through which the right-of-way~~
 19 ~~passes; and~~

20 ~~(C) contain a map and a general descrip-~~
 21 ~~tion of the route, termini, and width of the~~
 22 ~~right-of-way.~~

23 ~~(b) RECOGNITION OF OR OBJECTION TO RIGHT-OF-~~
 24 ~~WAY BY THE SECRETARY.—~~

25 ~~(1) IN GENERAL.—Not later than 2 years after~~
 26 ~~the date on which notice is filed with the Secretary~~

under subsection (a), the Secretary shall inform the person who filed the notice, and the State, and political subdivision through which the right-of-way passes, in writing of any objection to, the right-of-way or any portion of the right-of-way. The Secretary shall recognize any right-of-way that was accepted or established—

(A) in accordance with the law of the State where the right-of-way is located; or

(B) by an affirmative act of a State or political subdivision of a State indicating acceptance of the grant of the right-of-way.

(2) OBJECTIONS.—If the Secretary objects to the right-of-way as filed under subsection (a), the Secretary shall—

(A) specifically state any objections that the right-of-way was not legally accepted or established or is otherwise invalid and any objections to the route or width of the right-of-way, or portion of the right-of-way; and

(B) provide the factual and legal basis for each objection.

(3) EFFECT OF FAILURE TO OBJECT.—If the Secretary does not object within the 2-year period from the date on which notice is filed, the right-of-

1 way shall be deemed to be valid as it was presented
 2 to the Secretary.

3 **SEC. 3. JUDICIAL REVIEW.**

4 (a) **QUIET TITLE ACTION RELATING TO OBJEC-**
 5 **TION.**—Not later than 2 years after the first date on which
 6 the Secretary notifies a holder, or person who filed a no-
 7 tice, under section 2(b) of objection to a right-of-way, or
 8 portion of a right-of-way, the Secretary may bring an ac-
 9 tion based on the objection in the United States district
 10 court for the district in which the right-of-way or portion
 11 of the right-of-way is located to challenge the validity of
 12 the right-of-way or portion of the right-of-way.

13 (b) **BURDEN OF PROOF.**—In any action brought
 14 under subsection (a), the United States shall bear the bur-
 15 den of proof on all issues, including, but not limited to,
 16 the burden of proving that—

17 (1) the right-of-way was not a public right-of-
 18 way;

19 (2) the right-of-way was not accepted or estab-
 20 lished in accordance with the law of the State where
 21 the right-of-way is located or by an affirmative act
 22 of a State or political subdivision of a State indicat-
 23 ing acceptance of the grant of the right-of-way;

1 (3) the land on which the right-of-way is lo-
 2 eated was reserved for public use at the time of ac-
 3 ceptance of the right-of-way; and

4 (4) the width of the right-of-way identified in
 5 the notice of the right-of-way exceeds the width per-
 6 mitted under State law.

7 (c) **FAILURE TO BRING ACTION.**—If the Secretary
 8 does not bring an action under subsection (a) within the
 9 2-year period described in subsection (a), the right-of-way
 10 shall be deemed to be valid in the form in which it was
 11 filed with the Secretary.

12 **SEC. 4. MANAGEMENT OF LANDS.**

13 (a) The Secretary shall record any valid right-of-way
 14 in the appropriate land records and on maps of the Sec-
 15 retary and shall manage the land subject of the right-of-
 16 way in a manner that does not interfere with the use of
 17 the right-of-way.

18 (b) The Secretary, or any public land management
 19 official, is hereby prohibited from promulgating any regu-
 20 lations relating to R.S. 2477 rights-of-way that are not
 21 essential to carry out the express purposes of this Act.

22 **SEC. 5. MISCELLANEOUS PROVISIONS.**

23 (a) **QUIET TITLE ACTION.**—Nothing in this Act shall
 24 prevent the holder of a right-of-way described in section
 25 2 from bringing an action to quiet title with respect to

1 the right-of-way under section 2409a of title 28, United
 2 States Code, nor shall any proceedings taken under this
 3 Act be deemed to be a prerequisite to filing any such ac-
 4 tion. Such an action may be brought within the period
 5 ending on the later of—

6 (1) 12 years after the date of a notice of objec-
 7 tion from the Secretary under section 2(b)(1); or

8 (2) the termination of the limitation period
 9 under section 2409a of title 28, United States Code.

10 (b) APPLICATION OF STATE LAW.—

11 (1) IN GENERAL.—Nothing in this Act limits
 12 the application of State law in determining the valid-
 13 ity of any right-of-way granted under section 2477
 14 of the Revised Statutes.

15 (2) PROCEEDINGS.—In a proceeding to deter-
 16 mine the validity of such a right-of-way, the law of
 17 the State where the right-of-way is located shall de-
 18 termine the attributes of the right-of-way. The pub-
 19 lished regulations of the Department of the Interior
 20 pertaining to section 2477 of the Revised Statutes
 21 that were in effect on October 20, 1976, shall be
 22 binding on the Secretary in all such proceedings.

23 (c) NEPA.—The National Environmental Policy Act
 24 of 1969 (83 Stat. 852) shall not be construed, in whole
 25 or in part, as requiring the preparation or submission of

1 any environmental document for any action taken by the
2 Secretary pursuant to this Act.
3 *No final rule or regulation of any agency of the Federal*
4 *Government pertaining to the recognition, management, or*
5 *validity of a right-of-way pursuant to Revised Statute 2477*
6 *(43 U.S.C. 932) shall take effect unless expressly authorized*
7 *by an Act of Congress subsequent to the date of enactment*
8 *of this Act.*

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